IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
JAIPUR
ORDER
S.B. Civil Writ Petition No.141/07
Bajrang Lal Vs. State of Raj. & Anr.

S.B. Civil Writ Petition No.2200/07
Noordeen Khan Vs. State of Raj. & Ors.

S.B. Civil Writ Petition No.4770/06
Prem Singh Vs. State of Raj. & Ors.

Date of Order :: 30th April, 2007

Hon'ble Mr. Justice Mohammad Rafiq

Shri R.N. Mathur)
Shri Rajeev Sogarwal)
Shri P.C. Swami)
Shri Tanveer Ahmed) for petitioners.
Shri Jagmeet Singh for Shri G.S. Gill, Addl. Advocate General
Shri S.N. Gupta, Deputy Government Advocate
Shri Amit Jindal for respondent.

All these writ petitions though founded on different facts but raise a common question of law, therefore, they are being heard on the same day and are now being decided by this common

judgment.

In S.B. Civil Writ Petition No.141/07, Bajrang Lal Vs. State of Raj. & Anr., the petitioner was declared disqualified to contest the election according to Section 19 (l) of the Rajasthan Panchayati Raj Act, 1994 as his wife has given birth to third child on 20.5.1998 i.e. after the cut off date of 27.11.1995 and therefore the office of Panchayat Samiti Nawalgarh, Distt. Jhunjhunu held by him was declared to have been vacated by order of the government dated 23.12.2006.

In S.B. Civil Writ Petition No.2200/07, Noordeen Khan Vs. State of Raj. & Ors., also the petitioner was declared disqualified under Section 19(l) of the said Act to hold the office of

Ward Panch of Gram Panchayat Palkhadi, Panchayat Samiti Umren, Distt. Alwar. by order of the Divisional Commissioner, Jaipur dated 15.12.2006 as his wife has given birth to third child after 27.11.1995 which again was after the cut off date of 27.11.1995.

In S.B. Civil Writ Petition No.4770/06, Prem Singh Vs. State of Raj. & Ors. also the petitioner was declared disqualified under Section 19 (l) of the said Act to hold the office of Sarpanch of Gram Panchayat Ooch, Panchayati Samiti Nadbai, Bharatpur by order of the government dated 7.6.2006 as his wife has given birth to third child after the cut off date of 27.11.1995.

What is common in all these cases is that the pre-election qualification was

the foundation of the orders impugned in these cases declaring the office held by them as vacant. This issue was referred to the Larger Bench of this Court in Smt. Sameera Bano Vs. State of Raj. & Ors., D.B. Civil Special Appeal (W) No.236/06 as to whether any elected member of panchayat can be removed from his / her office on the basis of pre-election disqualification in exercise of administrative powers under Section 39(2) read with Section 23 of the Rajasthan Panchayati Raj Act, 1994 and the Rajasthan Panchayati Raj Rules. The Larger Bench held as under:-

> “that a pre-election disqualification can be adjudicated only in an election petition before the District Judge under Section 43 of the Act

read with rule 80 of the Election Rules and cannot be adjudicated by the authority under rule 23 of the Rules."

In view of the judgment passed by the Larger Bench, the writ petitions deserve to be allowed and are accordingly allowed. The impugned order dated 23.12.2006 passed in S.B. Civil Writ Petition No.141/2007, order dated 15.12.2006 passed in S.B. Civil Writ Petition No.2200/2007 and the order dated 7.6.2006 passed in S.B. Civil Writ Petition No.4770/2006 are quashed and set aside and the petitioners are held entitled to continue to hold and continue in their respective offices for the entire duration of their election.

(Mohammad Rafiq),J.

RS/-